

State of Ohio, Wyandot County, ss  
I certify this to be a true copy of the original filed in  
this office on March 8, 2022  
WITNESS my hand and seal, this 18<sup>th</sup>  
day of March 2022

By Eileen Watson, Clerk

IN THE COURT OF COMMON PLEAS OF WYANDOT COUNTY, OHIO  
UPPER SANDUSKY, OHIO

**22CV0012**

KALMBACH FEEDS  
7148 State Highway 199  
Upper Sandusky, Ohio 43351  
USA

Plaintiff,

vs.

Case No. \_\_\_\_\_

COMPLAINT

WESTERN GRAIN TRADING INC.  
16766 TransCanada Highway Suite 400  
Kirkland, QC H9H 4M7  
Canada

Defendant.

Now comes the Plaintiff Kalmbach Feeds Inc., by and through their counsel, and for their Complaint say:

1. The Plaintiff Kalmbach Feeds Inc. (hereinafter referred to as "Kalmbach") is a duly organized Ohio corporation authorized to do business in the State of Ohio and its principle place of business is located in Wyandot County, Ohio, at 7148 State Highway 199, Upper Sandusky, Ohio 43351, USA. Kalmbach Feeds Inc. manufactures and sells top quality animal feed and custom nutritional products for livestock and poultry species.

2. The Defendant Western Grain Trading Inc. (hereinafter referred to as "Western Grain") is an international commodities trading firm specializing in the trade and resale

EARS, PRY, GRIEBLING  
& McBRIDE, PLLC  
ATTORNEYS AT LAW  
120 N. LANE STREET  
DRAWER 309  
DUVALIS, OHIO 44820  
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614-862-9856

of organic and non-GMO grains, oilseeds and other commodities throughout North America and Europe. Western Grain corporate headquarters is located at 16766 TransCanada Highway Suite 400 Kirkland, QC H9H4M7 Canada.

3. The parties entered into three separate contracts whereby the Defendant was to supply and deliver goods to the Plaintiff in Wyandot County, Ohio.

4. On or about February 23, 2021, Kalmbach entered into a contract (PC000624) with the Defendant Western Grain whereas Western Grain would deliver 1,200 tons of organic soybean meal at a price of \$908.00 per ton to be delivered to the Plaintiff in Wyandot County, Ohio between April 1, 2021 and May 31, 2021. A copy of the contract is attached as Exhibit A and incorporated herein.

5. The Defendant Western Grain breached contract (PC000624) by failing to deliver the 1,200 tons of organic soybean meal to Kalmbach as contracted between the parties.

6. On or about February 24, 2021 Kalmbach entered into a contract (000633) with Western Grain whereas Western Grain would deliver 3,000 tons of organic soybean meal at a price of \$909.00 per ton to be delivered between May 1, 2021 and September 30, 2021. A copy of the contract (PC000633) is attached as Exhibit B and incorporated herein.

7. The Defendant Western Grain breached contract (PC000633) by failing to deliver 2,550 tons of the 3,000 tons contracted between the parties.

8. On or about March 1, 2021 Kalmbach entered into a contract (C000659) with Western Grain whereas Western Grain would deliver 2,500 tons of organic soybean

meal at \$934.00 per ton to be delivered to the Plaintiff in Ohio between April 1, 2021 and October 31, 2021. A copy of the contract is attached as Exhibit C and incorporated herein.

9. The Defendant Western Grain breached contract (PC000659) by failing to deliver 2,410 tons of soybean meal of the 2,500 tons contracted between the parties.

10. As a result of the Defendant's breach, the Plaintiff in good faith and within a reasonable period of time purchased goods as a substitution for those contracted with the Defendant Western Grain Trading Inc. who did not deliver them.

11. As a result of the Defendant's breach of contract (PC000624), the Plaintiff sustained damages of \$397,650, the difference of the contracted price and the cost of the Plaintiff purchasing the goods as substitution for those contracted from the Defendant and not delivered.

12. As a result of the Defendant's breach of contract (PC000633), the Plaintiff sustained damages of \$952,370.00, the difference of the contracted price and the cost of the Plaintiff purchasing goods as substitution for those contracted from the Defendant and not delivered.

13. As a result of the Defendant's breach of contract (PC000659), the Plaintiff sustained damages of \$1,118,551.00, the difference of the contracted price and the cost of the Plaintiff purchasing goods as substitution for those contracted from the Defendant and not delivered.

WHEREFORE, the Plaintiff pray for judgment against the Defendant in the sum of \$2,468,571.00, reasonable attorney fees, court costs and such further relief and orders the Court deems just.

Respectfully submitted,



G. Scott McBride, (#0034610)  
SEARS, PRY GRIEBLING & McBRIDE, P.L.L.  
120 North Lane St., P.O. Box 309, Bucyrus, OH 44820  
PH: 419 562-9856, Ext. 225; FAX: 419 562-9883  
Email: scott@spgmlaw.com  
*Counsel for the Plaintiff Kalmbach Feeds, Inc.*

Kalmbach Feeds, Inc.  
7148 State Highway 199  
Upper Sandusky, OH 43351  
Phone: (419) 294-3838  
Fax: (419) 294-4350



## CONTRACT

## EXHIBIT A

ORDER NO.: PC000624

ORDER DATE: 02/23/2021

SUPPLIER: WEGRTR - WESTERN GRAIN TRAD

VENDOR
WESTERN GRAIN TRADING INC
16766 TRANSCANADA HWY
STE 400
KIRKLAND, QC H9H4M7
Canada

REFERENCE	11864
BUYER	Brad Johnson
SHIPMENT MODE	Supplier Delivered
PAYMENT TERMS	Net 15 Days

CONTRACT VALIDITY	
START	END
04/01/2021	05/31/2021

CONTRACT DETAILS				

KFI CODE	SUPPLIER CODE	DESCRIPTION	UOM	ORD QUANTITY	DATE		PRICE
195BK		ORGANIC SBM	TON	1,200.00	04/01/2021		908.00000

NOP Certified Organic Soybean Meal.  
Domestically Processed. 46% Min protein; 6.5% Max Moisture; 6% Min Fat; 9% Max Fat; 7% Max Crude Fiber; 7% Max Ash; .02 Max Urease; 75% Min KOH. Product must meet Non GMO Project Standards.

ORDER CONTACT

Brad Johnson

Supplier's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

All ingredients must have an expiration date of no less than 2 years. POs must be on all delivery tickets and BOLs.  
Delivery will be by truck unless specifically called out as a different delivery mode

Kalmbach Feeds, Inc.  
7148 State Highway 199  
Upper Sandusky, OH 43351  
Phone: (419) 294-3838  
Fax: (419) 294-4350



## CONTRACT

ORDER NO.: PC000624

ORDER DATE: 02/23/2021

SUPPLIER: WEGRTR - WESTERN GRAIN TRAD

## PURCHASE ORDER TERMS AND CONDITIONS

1. **Buyer's Terms and Conditions.** The terms and conditions herein govern the relationship of Buyer and Seller and apply to all sales of products from Seller to Buyer for consumption by animals including, but not limited to, feed; products purchased for resale; raw materials, ingredients and components of feed which may be mixed, compounded, modified or manufactured into animal feed; vitamins; supplements; products that enhance animal growth or productivity; medicinal and nutritional products; as well as packaging materials, equipment, parts, supplies, materials, or other personal property (individually and collectively, "Products"). Seller acknowledges and agrees that these Terms and Conditions are incorporated in, and are a part of, each quotation, purchase order, acceptance, invoice, release, requisition, work order, shipping instruction, specification, and any other document, whether expressed verbally, in written form or electronic commerce, relating to the sale of Products by Seller to Buyer (these documents are collectively referred to as the "Agreement"). Seller acknowledges that he is a person who deals in grain, vitamins, minerals, animal health products and/or feedstuffs and holds himself out as having the knowledge or skill particular to the commodity, practice, or goods involved in this transaction and as such, shall be considered a merchant. These Terms and Conditions do not need to be separately signed in order to be binding and enforceable by the Parties.
2. **Parties.** "Buyer" shall mean either Kalmbach Feeds, Inc., an Ohio corporation, Kalmbach Feeds of Michigan, Inc., an Ohio corporation, Kalmbach Feeds Thumb Division, LLC, an Ohio limited liability company, Kalmbach Feeds of Pennsylvania, LLC, an Ohio limited liability company, and Custom Feed Mill, LLC, whichever one is shown as the Buyer on the purchase order. "Seller" shall mean the entity or person accepting Buyer's purchase order or otherwise contracting to provide the goods being purchased by Buyer.
3. **Pricing.** Prices for Products shall be the Seller's established price for each Product being purchased. Until Buyer has been informed of the price to be charged and has agreed to same, Buyer shall have the right to rescind its purchase order by notifying Seller in writing within 3 days of obtaining Seller's pricing.
4. **Terms of Payment.** Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller net 30 days of Seller's invoice subject to appropriate set offs.
5. **Inspection and Acceptance.** Buyer will have 15 days from the date of delivery to visually inspect the Products for defects that are identifiable upon receipt, including, but not limited to nonconformance, damage, shortage, or errors in shipping (collectively the "Defects") and notify Seller in writing that it will either (i) accept the Products with all Defects but subject to the right to reduce the price to reflect the diminution in value due to the Defects or (ii) reject the Products. After this period Buyer will notify Seller of any additional defects as they become known to Buyer. All returns of rejected Product will be pursuant to usual protocols of Buyer with respect to rejected and returned Products. After this period, Buyer will be deemed to have irrevocably accepted the Products, if not previously accepted. After acceptance, Buyer will have no right to reject the Products for any reason or revoke acceptance. Notwithstanding the foregoing however, Buyer shall have the right to either (i) accept the Products with all Defects but subject to the right to reduce the price to reflect the diminution in value due to the Defects or (ii) reject the Products at any time after the 15 day period in the following situations:
  - A. Buyer determines that the Products are Defective as a result of testing conducted by the Buyer or others after the 15 day period has elapsed; or
  - B. Buyer or Buyer's customer(s) use the Products and only after the Products have been used is it determined that the Products are Defective and, in each case the Product's Defects could not be visually ascertained within the 15 day period.
  - C. Product must meet Seller's specs or guaranteed analysis. Product must also be fit to meet the AFCO definitions relating to the product name under which it is labeled.
6. **Seller's Warranty.** Seller warrants that the Products (i) are of merchantable quality, (ii) are fit for the intended purposes of Buyer and (iii) meet the specifications for the Products provided by Seller. Seller hereby assigns to Buyer all warranties, if any, extended by the manufacturer of the Products to Seller, but only if transferable.
7. **Inspection fees; Taxes.** Seller shall pay all inspection fees. Seller shall have sole liability for any federal, state or local taxes resulting from this transaction. Seller shall indemnify and hold Buyer harmless from any liability for such taxes.
8. **Insecurity.** Buyer retains the right to (a) withhold payment of monies due Seller under this contract, or (b) require other adequate assurance of Seller's performance, if, in Buyer's sole discretion, Buyer has reason to feel insecure. Seller must make any such required payments or do such other things as required under this paragraph in the time and manner set forth by Buyer.
9. **Waiver.** Acceptance of any performance by Buyer after breach of this contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such breach.
10. **Assignment.** The respective rights, obligations, and liabilities of Seller are not assignable without the prior written consent of Buyer.
11. **Delivery.** Seller has an obligation to deliver the Products described in this contract in accordance with the schedule set forth in the purchase order or other documentation related to this sale. Seller's obligation to deliver is absolute and Seller warrants that it will deliver the quantity and quality of Product described in the purchase order regardless of any other similar delivery commitments Seller has or may have with Buyer or any other parties. Every effort will be made by buyer to accept the commodity covered by this contract. However, if it is impossible due to conditions beyond Buyer's control, Seller's obligations shall not be cancelled. In addition, Buyer has the right, without penalty, to delay the time for accepting delivery and making payment under this contract in such a situation.
12. **Title and Risk of Loss.** Title to and risk of loss or damage to the Products will pass to Buyer on delivery by Seller F.O.B. (a) Seller's facility, (b) Seller's supplier's facility when Products are shipped directly from the manufacturer, if other than Seller or (c) as otherwise specifically indicated in the Agreement.
13. **Arbitration; Governing Law.** The sole remedy for resolution of any disputes arising under this contract shall be through arbitration. Notwithstanding the foregoing, if the dispute is related solely to the failure of one party to make a payment due the other party, then such dispute shall be litigated only in an Ohio state court sitting in Wyandot County, Ohio or the Federal District Court, Southern District of Ohio. The parties waive any issues relating to the claim of inconvenient forum.
14. **Successors and Assigns.** This contract, and any valid written and signed amendments, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and successors of the respective parties.
15. **Modifications and Waiver-Entire Agreement.** The Agreement contains the entire agreement between Seller and Buyer and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of the Agreement will be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable, will apply only to the specific case for which the waiver is given. Failure of either party to insist on strict performance of the Agreement will not be construed as a waiver of any term or condition of the Agreement.
16. **Applicable Terms and Conditions.** Any document submitted by Seller to Buyer confirming its intention to sell the Products described in the Agreement will be deemed to constitute a confirmation and acceptance of this Agreement, even if the document states terms in addition to or different from those in this Agreement. All agreements between Seller and Buyer will be solely under the terms and conditions of the Agreement and these Terms and Conditions, and Buyer objects to any and all additional or different terms contained in any document submitted to Buyer by Seller. Any execution by Buyer of any other document submitted by Seller in connection with the purchase of Products does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained in the Agreement and these Terms and Conditions, but will constitute only acknowledgement of receipt of the document. In addition, notwithstanding any terms contained in any documents submitted by Seller in connection with the sale of Products described under the Agreement, the acceptance of delivery by Buyer of Products described in the Agreement will constitute a course of conduct constituting Buyer's agreement to the terms and conditions of the Agreement and these Terms and Conditions only, to the exclusion of any additional or different terms and conditions. Seller agrees to fully disclose any quality issues, including but not limited to chemical, biological, or physical quality defects.
17. **Force Majeure.** Buyer will not be liable for any failure or delay in its receipt or acceptance of the Products or other performance hereunder in the event such performance is hindered or prevented, directly or indirectly, due to acts of God, fire, flood, wind, explosion, war, hostilities, riot, embargo, blockage, civil commotion, sabotage, law, act of government, prohibition to export, labor difficulties, strike or lockout, shortages of fuel or other types of energy, or any other cause beyond the reasonable control of Buyer.

All ingredients must have an expiration date of no less than 2 years. POs must be on all delivery tickets and BOLs.

Delivery will be by truck unless specifically called out as a different delivery mode

Kalmbach Feeds, Inc.  
7148 State Highway 199  
Upper Sandusky, OH 43351  
Phone: (419) 294-3838  
Fax: (419) 294-4350



## CONTRACT

## EXHIBIT B

ORDER NO.: PC000633

ORDER DATE: 02/24/2021

SUPPLIER: WEGRTR - WESTERN GRAIN TRAD

VENDOR
WESTERN GRAIN TRADING INC
16766 TRANSCANADA HWY
STE 400
KIRKLAND, QC H9H4M7
Canada

REFERENCE	11875
BUYER	Brad Johnson
SHIPMENT MODE	Supplier Delivered
PAYMENT TERMS	Net 15 Days

CONTRACT VALIDITY	
START	END
05/01/2021	09/30/2021

CONTRACT DETAILS	

KFI CODE	SUPPLIER CODE	DESCRIPTION	UOM	QUANTITY	ORD	DATE	PRICE
1195BK		ORG SOYBEAN MEAL INDIA	TON	3,000.00		05/01/2021	909.00000

ORDER CONTACT

Brad Johnson

Supplier's Signature:

Date:

All ingredients must have an expiration date of no less than 2 years. POs must be on all delivery tickets and BOLs.  
Delivery will be by truck unless specifically called out as a different delivery mode

Kalmbach Feeds, Inc.  
7148 State Highway 199  
Upper Sandusky, OH 43351  
Phone: (419) 294-3838  
Fax: (419) 294-4350



## CONTRACT

ORDER NO.: PC000633

ORDER DATE: 02/24/2021

SUPPLIER: WEGRTR - WESTERN GRAIN TRAD

## PURCHASE ORDER TERMS AND CONDITIONS

1. **Buyer's Terms and Conditions.** The terms and conditions herein govern the relationship of Buyer and Seller and apply to all sales of products from Seller to Buyer for consumption by animals including, but not limited to, feed; products purchased for resale; raw materials, ingredients and components of feed which may be mixed, compounded, modified or manufactured into animal feed; vitamins; supplements; products that enhance animal growth or productivity; medicinal and nutritional products; as well as packaging materials, equipment, parts, supplies, materials, or other personal property (individually and collectively, "Products"). Seller acknowledges and agrees that these Terms and Conditions are incorporated in, and are a part of, each quotation, purchase order, acceptance, invoice, release, requisition, work order, shipping instruction, specification, and any other document, whether expressed verbally, in written form or electronic commerce, relating to the sale of Products by Seller to Buyer (these documents are collectively referred to as the "Agreement"). Seller acknowledges that he is a person who deals in grain, vitamins, minerals, animal health products and/or feedstuffs and holds himself out as having the knowledge or skill particular to the commodity, practice, or goods involved in this transaction and as such, shall be considered a merchant. These Terms and Conditions do not need to be separately signed in order to be binding and enforceable by the Parties.
2. **Parties.** "Buyer" shall mean either Kalmbach Feeds, Inc., an Ohio corporation, Kalmbach Feeds of Michigan, Inc., an Ohio corporation, Kalmbach Feeds Thunb Division, LLC., an Ohio limited liability company, Kalmbach Feeds of Pennsylvania, LLC, an Ohio limited liability company, and Custom Feed Mill, LLC, whichever one is shown as the Buyer on the purchase order. "Seller" shall mean the entity or person accepting Buyer's purchase order or otherwise contracting to provide the goods being purchased by Buyer.
3. **Pricing.** Prices for Products shall be the Seller's established price for each Product being purchased. Until Buyer has been informed of the price to be charged and has agreed to same, Buyer shall have the right to rescind its purchase order by notifying Seller in writing within 3 days of obtaining Seller's pricing.
4. **Terms of Payment.** Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller net 30 days of Seller's invoice subject to appropriate set offs.
5. **Inspection and Acceptance.** Buyer will have 15 days from the date of delivery to visually inspect the Products for defects that are identifiable upon receipt, including, but not limited to nonconformance, damage, shortage, or errors in shipping (collectively the "Defects") and notify Seller in writing that it will either (i) accept the Products with all Defects but subject to the right to reduce the price to reflect the diminution in value due to the Defects or (ii) reject the Products. After this period Buyer will notify Seller of any additional defects as they become known to Buyer. All returns of rejected Product will be pursuant to usual protocols of Buyer with respect to rejected and returned Products. After this period, Buyer will be deemed to have irrevocably accepted the Products, if not previously accepted. After acceptance, Buyer will have no right to reject the Products for any reason or revoke acceptance. Notwithstanding the foregoing however, Buyer shall have the right to either (i) accept the Products with all Defects but subject to the right to reduce the price to reflect the diminution in value due to the Defects or (ii) reject the Products at any time after the 15 day period in the following situations:
  - A. Buyer determines that the Products are Defective as a result of testing conducted by the Buyer or others after the 15 day period has elapsed; or
  - B. Buyer or Buyer's customer(s) use the Products and only after the Products have been used is it determined that the Products are Defective and, in each case the Product's Defects could not be visually ascertained within the 15 day period.
  - C. Product must meet Seller's specs or guaranteed analysis. Product must also be fit to meet the AFCO definitions relating to the product name under which it is labeled.
6. **Seller's Warranty.** Seller warrants that the Products (i) are of merchantable quality, (ii) are fit for the intended purposes of Buyer and (iii) meet the specifications for the Products provided by Seller. Seller hereby assigns to Buyer all warranties, if any, extended by the manufacturer of the Products to Seller, but only if transferable.
7. **Inspection fees; Taxes.** Seller shall pay all inspection fees. Seller shall have sole liability for any federal, state or local taxes resulting from this transaction. Seller shall indemnify and hold Buyer harmless from any liability for such taxes.
8. **Insolvency.** Buyer retains the right to (a) withhold payment of monies due Seller under this contract, or (b) require other adequate assurance of Seller's performance, if, in Buyer's sole discretion, Buyer has reason to feel insecure. Seller must make any such required payments or do such other things as required under this paragraph in the time and manner set forth by Buyer.
9. **Waiver.** Acceptance of any performance by Buyer after breach of this contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such breach.
10. **Assignment.** The respective rights, obligations, and liabilities of Seller are not assignable without the prior written consent of Buyer.
11. **Delivery.** Seller has an obligation to deliver the Products described in this contract in accordance with the schedule set forth in the purchase order or other documentation related to this sale. Seller's obligation to deliver is absolute and Seller warrants that it will deliver the quantity and quality of Product described in the purchase order regardless of any other similar delivery commitments Seller has or may have with Buyer or any other parties. Every effort will be made by buyer to accept the commodity covered by this contract. However, if it is impossible due to conditions beyond Buyer's control, Seller's obligations shall not be cancelled. In addition, Buyer has the right, without penalty, to delay the time for accepting delivery and making payment under this contract in such a situation.
12. **Title and Risk of Loss.** Title to and risk of loss or damage to the Products will pass to Buyer on delivery by Seller F.O.B. (a) Seller's facility, (b) Seller's supplier's facility when Products are shipped directly from the manufacturer, if other than Seller or (c) as otherwise specifically indicated in the Agreement.
13. **Arbitration; Governing Law.** The sole remedy for resolution of any disputes arising under this contract shall be through arbitration. Notwithstanding the foregoing, if the dispute is related solely to the failure of one party to make a payment due the other party, then such dispute shall be litigated only in an Ohio state court sitting in Wyandot County, Ohio or the Federal District Court, Southern District of Ohio. The parties waive any issues relating to the claim of inconvenient forum.
14. **Successors and Assigns.** This contract, and any valid written and signed amendments, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and successors of the respective parties.
15. **Modifications and Waiver-Entire Agreement.** The Agreement contains the entire agreement between Seller and Buyer and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of the Agreement will be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable, will apply only to the specific case for which the waiver is given. Failure of either party to insist on strict performance of the Agreement will not be construed as a waiver of any term or condition of the Agreement.
16. **Applicable Terms and Conditions.** Any document submitted by Seller to Buyer confirming its intention to sell the Products described in the Agreement will be deemed to constitute a confirmation and acceptance of this Agreement, even if the document states terms in addition to or different from those in this Agreement. All agreements between Seller and Buyer will be solely under the terms and conditions of the Agreement and these Terms and Conditions, and Buyer objects to any and all additional or different terms contained in any document submitted to Buyer by Seller. Any execution by Buyer of any other document submitted by Seller in connection with the purchase of Products does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained in the Agreement and these Terms and Conditions, but will constitute only acknowledgment of receipt of the document. In addition, notwithstanding any terms contained in any documents submitted by Seller in connection with the sale of Products described under the Agreement, the acceptance of delivery by Buyer of Products described in the Agreement will constitute a course of conduct constituting Buyer's agreement to the terms and conditions of the Agreement and these Terms and Conditions only, to the exclusion of any additional or different terms and conditions. Seller agrees to fully disclose any quality issues, including but not limited to chemical, biological, or physical quality defects.
17. **Force Majeure.** Buyer will not be liable for any failure or delay in its receipt or acceptance of the Products or other performance hereunder in the event such performance is hindered or prevented, directly or indirectly, due to acts of God, fire, flood, wind, explosion, war, hostilities, riot, embargo, blockage, civil commotion, sabotage, law, act of government, prohibition to export, labor difficulties, strike or lockout, shortages of fuel or other types of energy, or any other cause beyond the reasonable control of Buyer.

All ingredients must have an expiration date of no less than 2 years. POs must be on all delivery tickets and BOLs.

Delivery will be by truck unless specifically called out as a different delivery mode

Kalmbach Feeds, Inc.  
7148 State Highway 199  
Upper Sandusky, OH 43351  
Phone: (419) 294-3838  
Fax: (419) 294-4350



CONTRACT

EXHIBIT C

ORDER NO.: PC000659

ORDER DATE: 03/01/2021

SUPPLIER: WEGRTR - WESTERN GRAIN TRAD

VENDOR  
WESTERN GRAIN TRADING INC  
16766 TRANSCANADA HWY  
STE 400  
KIRKLAND, QC H9H4M7  
Canada

REFERENCE	
BUYER	Brad Johnson
SHIPMENT MODE	Supplier Delivered
PAYMENT TERMS	Net 15 Days

## CONTRACT VALIDITY

START	END
04/01/2021	10/31/2021

## CONTRACT DETAILS

Delivery Schedule will be roughly April 100 ST, May 300 ST, Jun 400 ST, Jul-Oct 425 ST per month.

KFI CODE	SUPPLIER CODE	DESCRIPTION	UOM	ORD QUANTITY	DATE		PRICE
195BK		ORGANIC SBM	TON	2,500.00	04/01/2021		934.00000

## ORDER CONTACT

Brad Johnson

Supplier's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

All ingredients must have an expiration date of no less than 2 years. POs must be on all delivery tickets and BOLs.

Delivery will be by truck unless specifically called out as a different delivery mode

All Warehouse deliveries require an appointment time: [www.opendock.com](http://www.opendock.com) or 419-294-3838 ext: 1977.

Kalmbach Feeds, Inc.  
7148 State Highway 199  
Upper Sandusky, OH 43351  
Phone: (419) 294-3838  
Fax: (419) 294-4350



## CONTRACT

ORDER NO.: PC000659

ORDER DATE: 03/01/2021

SUPPLIER: WEGRTR - WESTERN GRAIN TRAD

### PURCHASE ORDER TERMS AND CONDITIONS

1. **Buyer's Terms and Conditions.** The terms and conditions herein govern the relationship of Buyer and Seller and apply to all sales of products from Seller to Buyer for consumption by animals including, but not limited to, feed; products purchased for resale; raw materials, ingredients and components of feed which may be mixed, compounded, modified or manufactured into animal feed; vitamins; supplements; products that enhance animal growth or productivity; medicinal and nutritional products; as well as packaging materials, equipment, parts, supplies, materials, or other personal property (individually and collectively, "Products"). Seller acknowledges and agrees that these Terms and Conditions are incorporated in, and are a part of, each quotation, purchase order, acceptance, invoice, release, requisition, work order, shipping instruction, specification, and any other document, whether expressed verbally, in written form or electronic commerce, relating to the sale of Products by Seller to Buyer (these documents are collectively referred to as the "Agreement"). Seller acknowledges that he is a person who deals in grain, vitamins, minerals, animal health products and/or feedstuffs and holds himself out as having the knowledge or skill particular to the commodity, practice, or goods involved in this transaction and as such, shall be considered a merchant. These Terms and Conditions do not need to be separately signed in order to be binding and enforceable by the Parties.
2. **Parties.** "Buyer" shall mean either Kalmbach Feeds, Inc., an Ohio corporation, Kalmbach Feeds of Michigan, Inc., an Ohio corporation, Kalmbach Feeds Thunb Division, LLC., an Ohio limited liability company, Kalmbach Feeds of Pennsylvania, LLC, an Ohio limited liability company, and Custom Feed Mill, LLC, whichever one is shown as the Buyer on the purchase order. "Seller" shall mean the entity or person accepting Buyer's purchase order or otherwise contracting to provide the goods being purchased by Buyer.
3. **Pricing.** Prices for Products shall be the Seller's established price for each Product being purchased. Until Buyer has been informed of the price to be charged and has agreed to same, Buyer shall have the right to rescind its purchase order by notifying Seller in writing within 3 days of obtaining Seller's pricing.
4. **Terms of Payment.** Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller net 30 days of Seller's invoice subject to appropriate set offs.
5. **Inspection and Acceptance.** Buyer will have 15 days from the date of delivery to visually inspect the Products for defects that are identifiable upon receipt, including, but not limited to nonconformance, damage, shortage, or errors in shipping (collectively the "Defects") and notify Seller in writing that it will either (i) accept the Products with all Defects but subject to the right to reduce the price to reflect the diminution in value due to the Defects or (ii) reject the Products. After this period Buyer will notify Seller of any additional defects as they become known to Buyer. All returns of rejected Product will be pursuant to usual protocols of Buyer with respect to rejected and returned Products. After this period, Buyer will be deemed to have irreversibly accepted the Products, if not previously accepted. After acceptance, Buyer will have no right to reject the Products for any reason or revoke acceptance. Notwithstanding the foregoing however, Buyer shall have the right to either (i) accept the Products with all Defects but subject to the right to reduce the price to reflect the diminution in value due to the Defects or (ii) reject the Products at any time after the 15 day period in the following situations:
  - A. Buyer determines that the Products are Defective as a result of testing conducted by the Buyer or others after the 15 day period has elapsed; or
  - B. Buyer or Buyer's customer(s) use the Products and only after the Products have been used is it determined that the Products are Defective and, in each case the Product's Defects could not be visually ascertained within the 15 day period.
  - C. Product must meet Seller's specs or guaranteed analysis. Product must also be fit to meet the AFCO definitions relating to the product name under which it is labeled.
6. **Seller's Warranty.** Seller warrants that the Products (i) are of merchantable quality, (ii) are fit for the intended purposes of Buyer and (iii) meet the specifications for the Products provided by Seller. Seller hereby assigns to Buyer all warranties, if any, extended by the manufacturer of the Products to Seller, but only if transferable.
7. **Inspection fees; Taxes.** Seller shall pay all inspection fees. Seller shall have sole liability for any federal, state or local taxes resulting from this transaction. Seller shall indemnify and hold Buyer harmless from any liability for such taxes.
8. **Insecurity.** Buyer retains the right to (a) withhold payment of monies due Seller under this contract, or (b) require other adequate assurance of Seller's performance, if, in Buyer's sole discretion, Buyer has reason to feel insecure. Seller must make any such required payments or do such other things as required under this paragraph in the time and manner set forth by Buyer.
9. **Waiver.** Acceptance of any performance by Buyer after breach of this contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such breach.
10. **Assignment.** The respective rights, obligations, and liabilities of Seller are not assignable without the prior written consent of Buyer.
11. **Delivery.** Seller has an obligation to deliver the Products described in this contract in accordance with the schedule set forth in the purchase order or other documentation related to this sale. Seller's obligation to deliver is absolute and Seller warrants that it will deliver the quantity and quality of Product described in the purchase order regardless of any other similar delivery commitment Seller has or may have with Buyer or any other parties. Every effort will be made by buyer to accept the commodity covered by this contract. However, if it is impossible due to conditions beyond Buyer's control, Seller's obligations shall not be cancelled, in addition, Buyer has the right, without penalty, to delay the time for accepting delivery and making payment under this contract in such a situation.
12. **Title and Risk of Loss.** Title to and risk of loss or damage to the Products will pass to Buyer on delivery by Seller F.O.B. (a) Seller's facility, (b) Seller's supplier's facility when Products are shipped directly from the manufacturer, if other than Seller or (c) as otherwise specifically indicated in the Agreement.
13. **Arbitration; Governing Law.** The sole remedy for resolution of any disputes arising under this contract shall be through arbitration. Notwithstanding the foregoing, if the dispute is related solely to the failure of one party to make a payment due the other party, then such dispute shall be litigated only in an Ohio state court sitting in Wyandot County, Ohio or the Federal District Court, Southern District of Ohio. The parties waive any issues relating to the claim of inconvenient forum.
14. **Successors and Assigns.** This contract, and any valid written and signed amendments, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and successors of the respective parties.
15. **Modifications and Waiver-Entire Agreement.** The Agreement contains the entire agreement between Seller and Buyer and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of the Agreement will be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable, will apply only to the specific case for which the waiver is given. Failure of either party to insist on strict performance of the Agreement will not be construed as a waiver of any term or condition of the Agreement.
16. **Applicable Terms and Conditions.** Any document submitted by Seller to Buyer confirming its intention to sell the Products described in the Agreement will be deemed to constitute a confirmation and acceptance of this Agreement, even if the document states terms in addition to or different from those in this Agreement. All agreements between Seller and Buyer will be solely under the terms and conditions of the Agreement and these Terms and Conditions, and Buyer objects to any and all additional or different terms contained in any document submitted by Buyer by Seller. Any execution by Buyer of any other document submitted by Seller in connection with the purchase of Products does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained in the Agreement and these Terms and Conditions, but will constitute only acknowledgment of receipt of the document. In addition, notwithstanding any terms contained in any document submitted by Seller in connection with the sale of Products described under the Agreement, the acceptance of delivery by Buyer of Products described in the Agreement will constitute a course of conduct constituting Buyer's agreement to the terms and conditions of the Agreement and these Terms and Conditions only, to the exclusion of any additional or different terms and conditions. Seller agrees to fully disclose any quality issues, including but not limited to chemical, biological, or physical quality defects.
17. **Force Majeure.** Buyer will not be liable for any failure or delay in its receipt or acceptance of the Products or other performance hereunder in the event such performance is hindered or prevented, directly or indirectly, due to acts of God, fire, flood, wind, explosion, war, hostilities, riot, embargo, blockage, civil commotion, sabotage, law, act of government, prohibition to export, labor difficulties, strike or lockout, shortages of fuel or other types of energy, or any other cause beyond the reasonable control of Buyer.

All ingredients must have an expiration date of no less than 2 years. POs must be on all delivery tickets and BOLs.

Delivery will be by truck unless specifically called out as a different delivery mode

All Warehouse deliveries require an appointment time: [www.opendock.com](http://www.opendock.com) or 419-294-3838 ext: 1977.